

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARNELL L. POLITE,

Defendant.

**8:21-CR-166**

**ORDER**

This matter is before the Court for its review of the Magistrate Judge's Findings and Recommendation ([Filing 43](#)) recommending the Court deny Defendant's Motion to Dismiss Count II of the Indictment ([Filing 28](#)) and the government be allowed to proceed only on the possession prong of 18 U.S.C. § 924(c)(1)(A). No party has objected.

28 U.S.C. § 636(b)(1) requires de novo review "only when a party objected to the magistrate's findings and recommendations." *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609, 619-20 (8th Cir. 2009) (quoting *Peretz v. United States*, 501 U.S. 923, 939 (1991)). "[T]he failure to file objections eliminates not only the need for de novo review, but any review by the district court." *Id.* at 620. Furthermore, the Magistrate Judge advised the parties, pursuant to NECrimR [59.2](#), that any objection must be filed within fourteen days and "[f]ailure to timely object may constitute a waiver of any such objection." [Filing 43 at 4](#). Because no party has objected, any objections are waived, and the Court will adopt the Magistrate Judge's Findings and Recommendation ([Filing 43](#)). Accordingly,

IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation, [Filing 43](#), is adopted;
2. Defendant's Motion to Dismiss Count II of the Indictment, [Filing 28](#), is denied;

3. The government will be allowed to proceed only under the possession prong of [18 U.S.C. § 924\(c\)\(1\)\(A\)](#); and
4. The Clerk of Court is ordered to terminate the pending motions at [Filing 28](#) and [Filing 43](#).

Dated this 29th day of October, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B.C. Buescher", is written over a horizontal line.

Brian C. Buescher  
United States District Judge